

PROB 12B
(7/93)FILED
Clerk
District Court*United States District Court*

FEB - 9 2006

for

*the Northern Mariana Islands*For The Northern Mariana Islands
By _____
(Deputy Clerk)**Report for Modifying the Conditions or Term of Supervision
with Consent of the Offender**
(Probation Form 49, Waiver of Hearings is Attached)Name of Offender: **Nicholas C. Pinaula**Case Number: **CR 00-00003-002**Name of Sentencing Judicial **Alex R. Munson**Date of Original Sentence: **August 15, 2000**Original Offense: **Conspiracy to Possess Methamphetamine, a Scheduled II Controlled Substance, in violation of 21 U.S.C. §§ 841(a)(1) and 846 and Possession with Intent to Distribute Methamphetamine, in violation of 21 U.S.C. § 841(a)(1).**Original Sentence: **18 months imprisonment followed by a four year term of supervised release with conditions to include: that the defendant not commit another federal, state, or local crime; not possess a firearm or other dangerous weapon; submit to one urinalysis within 15 days of release, and submit but not be limited to two additional urinalysis thereafter not to exceed 60 days; participate in a substance abuse treatment program approved by the U.S. Probation Office for treatment of narcotic addiction or drug or alcohol dependency which will include testing for the detection of substance use or abuse; refrain from the use of any alcoholic beverage; seek and maintain gainful employment; perform 300 hours of community service under the direction of the U.S. Probation Office. On January 17, 2003, supervised release conditions were modified to include the defendant's condition to seek and maintain gainful employment is suspended to allow him to care for his sickly father.**Type of Supervision: **Supervised Release** Date Supervision Commenced: **February 22, 2002**Assistant U.S. Attorney: **Timothy E. Moran**Defense Attorney: **Colin Thompson**

PETITIONING THE COURT

- ☐ To extend the term of supervision for _____ years, for a total term of _____ years.
- ☒ To modify the conditions of supervision as follows:

CAUSE

- The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer.

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On September 2, 2005, the Ninth Circuit, in *United States v. Stephens*, No. 04-50170, addressed 18 U.S.C. § 3583(d) supervised release and 18 U.S.C. §3563(a)(5) probation mandatory testing conditions which requires that the district court determine the maximum number of mandatory drug tests. The Ninth Circuit held that because the statute requires the district court to determine the maximum number of drug tests under the mandatory condition, transferring this duty to the probation officer was an improper delegation of Article III judicial power.


To assist the Court in determining the appropriate number of drug tests, the undersigned officer has evaluated Nicolas Pinaula's history of drug use, and the drug detection period of his drug of choice. As methamphetamine is considered one of the drugs of choice and has a normal detection period of four days or less, it is recommended that the maximum number of tests the court order per month be set at eight. This will allow for adequate time intervals between tests which will help facilitate the detection of use. It also provides for enough additional tests so that the pattern of testing will not be predictable to the offender.

To address the implications of *United States v. Stephens* Ninth Circuit No. 04-50170, it is respectfully requested that the Court modify Mr. Pinaula's mandatory condition to set the maximum number of tests he must submit. It is therefore recommended that the mandatory condition be modified as follows:

"The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer."

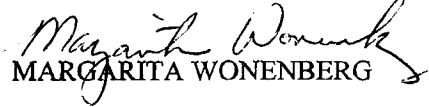
Nicolas Pinaula has agreed to the above modification and attached is a Probation From 49 Waiver of Hearing to Modify Conditions of Probation/Supervised Release or Extend Term of Supervision with his consent.

Reviewed by:


ROSSANNA VILLAGOMEZ-AGUON
U.S. Probation Officer
Supervision Unit Leader

Date: 2/8/06

Respectfully submitted,

by: 
MARGARITA WONENBERG
U.S. Probation Officer

Date: 2/9/06

THE COURT ORDERS

- ☐ No Action
- ☐ The Extension of Supervision as Noted Above.
- ☒ The Modification of Conditions as Noted Above.
- ☐ Other



Signature of Judicial Officer

2-9-06

Date

PROB 49
(3/89)

United States District Court

for

District of Northern Mariana Islands

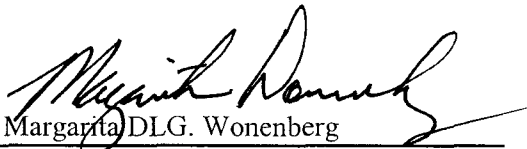
**Waiver of Hearing to Modify Conditions
of Probation/Supervised Release or Extend Term of Supervision**

I have been advised and understand that I am entitled by law to a hearing and assistance of counsel before any unfavorable change may be made in my Conditions of Probation and Supervised Release or my period of supervision being extended. By "assistance of counsel," I understand that I have the right to be represented at the hearing by counsel of my own choosing if I am able to retain counsel. I also understand that I have the right to request the court to appoint counsel to represent me at such a hearing at no cost to myself if I am not able to retain counsel of my own choosing.

I hereby voluntarily waive my statutory right to a hearing and to assistance of counsel. I also agree to the following modification of my Conditions of Probation and Supervised Release or to the proposed extension of my term of supervision:

That the defendant shall refrain from any unlawful use of a controlled substance, and shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, not to exceed eight tests per month, as directed by the probation officer;

Witness:


Margarita DLG. Wonenberg

U.S. Probation Officer

Signed:


Nicolas C. Pinaula

Probationer or Supervised Releasee

1-30-06

Date